



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 02, 2022

IN THE MATTER OF:

Appeal Board No. 623116

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board No. 623115, the claimant appeals from the decision of the Administrative Law Judge filed April 29, 2022, which sustained the initial determination holding the claimant ineligible to receive benefits, effective September 28, 2015 through January 24, 2016, on the basis that the claimant was not totally unemployed, as modified to be 24 days of ineligibility spread over the statutory weeks by alternating two days in the week ending October 4, 2015 with one day of ineligibility in the week ending October 11, 2015, and alternating in this pattern for the entire period.

In Appeal Board No. 623116, the claimant appeals from the decision of the Administrative Law Judge filed April 29, 2022, which sustained the initial determination charging the claimant with an overpayment of \$7,007.50 in benefits recoverable pursuant to Labor Law § 597 (4), as modified in

accordance with the decision and referred the amount to the Department of Labor for recalculation.

In Appeal Board No. 623117, the claimant appeals from the decision of the Administrative Law Judge filed April 29, 2022, which sustained the initial determination reducing the claimant's right to receive future benefits by 136 effective days and charging a civil penalty of \$756.93 on the basis that the claimant made willful misrepresentations to obtain benefits, as modified to impose a civil penalty in accordance with

the decision and referred the amount of the civil penalty to the Department of Labor for recalculation.

At the combined telephone conference hearings before the Administrative Law Judge, testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing. At the April 28, 2022 hearing, the claimant did not participate as he had been unable to open the documents the hearing section had been sending him for use at the hearings, and he had been continuing to look for representation after the representative that previously agreed to represent him notified him two weeks prior to the hearing that he would not be representing him. As a result, the Board has determined that the parties should have another opportunity to submit additional testimony and other evidence on the issues.

The Commissioner of Labor is to appear again by Janna Gill, Senior Unemployment Insurance Hearing Representative, and James Roseau, Investigative Officer. The claimant's representative, if any, is to be offered the opportunity to cross-examine the testimony of the witnesses for the Commissioner of Labor from all hearings and to offer objections to the entry of the documents previously entered into the record as exhibits. If the claimant proceeds without representation, the claimant shall be offered the opportunity to cross-examine the testimony from the April 28, 2022 hearing and to offer objections to the entry of the documents accepted for the record at that hearing.

The hearing section shall contact the claimant regarding accommodations regarding providing him the documentation for the hearing, including the transcripts, the hearing packets, and any additional documents and exhibits which had been received from the parties which had not been included in the hearing packets.

The Judge may take further relevant and material evidence as the Judge deems necessary.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the hearing shall be conducted so that there has been an

opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues of lack of total unemployment, recoverable overpayment and willful misrepresentations, which shall be based on the entire

record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER